SAW WOEI CHIN (WASI HARTA PESAKA SAW CHIN HUAT, SI MATI) v. LIM SEANG LEE (BERAMAL DI BAWAH NAMA DAN GAYA TETUAN LIM SEANG LEE & ASSOCIATES)

HIGH COURT MALAYA, PENANG
QUAY CHEW SOON J
[ORIGINATING SUMMONS NO: PA-24NCvC-589-06-2022]
20 JUNE 2023

Abstract – *The legal services provided on terms beneficial to the client, as well as the nature of legal services performed by a solicitor, which achieves for the client his desired goals, must be weighed against the amount claimed in a bill of costs. The Senior Assistant Registrar must take into proper consideration the legal presumption of conclusiveness conferred by O. 59 r. 17(3) of the Rules of Court 2012 as to the reasonableness of the amount claimed as costs by the solicitor.*

LEGAL PROFESSION: *Bill of costs – Professional legal fees – Taxation – Determination of solicitor and client bill of costs – Whether reasonableness of costs claimed by solicitor should be assessed against principle of benefit resulting to client from legal services rendered – Whether fees claimed ought to be allowed in full – Whether solicitor fully complied with procedure for taxation under s. 132 of Legal Profession Act 1976 and O. 59 r. 12(1) & (2) read together with r. 7(2) of Rules of Court 2012 – Whether senior assistant registrar erred in not taking into proper consideration legal presumption of conclusiveness conferred by O. 59 r. 17(3) of Rules of Court 2012 as to reasonableness of amount claimed as costs by solicitor – Whether claim for costs time barred – Legal Profession (Practice and Etiquette) Rules 1978, r. 11*

This was an appeal against the decision of the Senior Assistant Registrar ('SAR') with respect to a taxation of costs. There were two appeals, namely (i) notice of appeal to judge in chambers (encl. 95) filed by the defendant ('receiving party'); and (ii) notice of appeal to judge in chambers (encl. 97) filed by the plaintiff ('paying party'). Both notices of appeal arose out of a taxation order made by the SAR whereby the SAR ordered that the receiving party's bill of costs ('bill of costs') be taxed at RM100,000 for Appendix A thereof, RM3,500 for Appendix B thereof and RM6,500 for Appendix C thereof. The receiving party was an advocate and solicitor of the High Court. She had issued a bill of costs for professional charges in respect of legal services rendered to the deceased. The said legal services were provided over a span of seven years beginning from 2014 until 2021. For some years, the deceased was locked in a dispute with the other shareholder and director of a company, Chin Hin Rice Mill Sdn Bhd ('company'). The deceased appealed to the receiving party for deferred billing and proposed to pay for the receiving party's services when the company was wound up and its

principal asset, a piece of land ('the land') was sold. The deceased agreed to pay an initial down payment of RM10,000 and also to pay for such disbursements as may be required from time to time. As the scope of the services required and the length of time needed to achieve a resolution could not be ascertained, it was therefore mutually agreed for the fee to be capped at 20% of the deceased's share of the sale price of the land, after deduction of real property gains tax. The land was subsequently sold for a purchase price of RM7,068,168. The receiving party by email provided the paying party with the computation of agreed fees and the paying party never disputed the said computation. The receiving party thereafter claimed total professional fees of RM735,166.72 and disbursements totalling RM5,674.64 of which the deceased had paid a sum of RM10,000 as part payment of fees and a total sum of RM4,233.83 for disbursements incurred. The deceased passed away and the paying party was the son of the deceased and executor of the estate of the deceased. The receiving party was claiming against the paying party for payment of the bill of costs. The paying party sought an order for taxation of the bill of costs, which was allowed. The court granted an order for taxation of the bill of costs pursuant to s. 126 of the Legal Profession Act 1976 ('LPA'). The total professional fees of RM735,166.72 claimed by the receiving party in the bill of costs consisted of (i) a sum of RM700,166.72 *vide* Annexure A thereof; (ii) a sum of RM12,000 *vide* Annexure B thereof; and (iii) a sum of RM23,000 *vide* Annexure C thereof. *Vide* his notice of appeal (encl. 97), the paying party asked that the bill of costs be taxed as follows (i) a sum of RM10,000 for Annexure A thereof; (ii) a sum of RM3,500 for Annexure B thereof; and (iii) a sum of RM5,500 for Annexure C thereof.

Held (allowing receiving party's appeal, dismissing paying party's appeal and setting aside taxation order of SAR):

(1) This matter involved a determination of solicitor and client bill of costs, and not party and party bill of costs. In an award of costs concerning costs payable to a solicitor by his own client, guidelines such as r. 11 of the Legal Profession (Practice and Etiquette) Rules 1978 should be considered. And where there is an express or implied agreement, then the conclusive presumption of reasonableness under O. 59 r. 17(3) of the Rules of Court 2012 ought to be applied. Order 59 r. 17 is applicable in an assessment involving the taxation of costs between solicitor and client where there is an agreement between the solicitor and the client in respect of the solicitors' costs incurred. The amount claimed in the bill of costs was a sum of RM735,166.72. The agreement made between the deceased and the receiving party was for the deceased to pay a deferred fee capped at 20% of the realised share entitlement of the deceased in the company. This fee agreement was made between the deceased and the receiving party in the presence of the deceased's

financial consultant and the paying party. Although this fee agreement was not in writing, it did not mean that it was not binding. It created a conclusive presumption that the agreed costs had been reasonably incurred and was reasonable in amount. (paras 14-18)

(2) The benefit resulting to the deceased from the legal services provided to him by the receiving party was evident. The legal services were provided on terms beneficial to the deceased. Firstly, it was a term and condition that the fees would be capped (capped fee) and secondly, that payment of the fee would be deferred (deferred fee). The terms and conditions agreed upon between the deceased and the receiving party was that the receiving party would commence providing legal services to the deceased immediately. The legal services to be provided would encompass achieving a clean break from the company and placing the deceased in a position free from liabilities as a director of the company, and to realise into cash his 60% shareholding in the company. It was mutually agreed that his fees payable would be capped at 20% of the realised cash value of his 60% share entitlement in the company. This agreement gave the deceased the assurance that the total fee would not exceed the capped amount, despite the unpredictability of the length of time and the extent of the legal services required to achieve his aim. As for the deferred fee arrangement, it undoubtedly was of benefit to the deceased. It enabled him to have the receiving party to commence work immediately on his behalf to achieve his aim of realising his 60% share entitlement in the company and to free him from the potential liabilities of being a director thereof. The fairness and reasonableness of the costs claimed by the receiving party should be assessed against this principle of benefit resulting to the client from the services provided to the deceased. (paras 32-40)

(3) The deceased himself considered the fee agreement to be fair and reasonable. At no time prior to his death had he ever expressed otherwise. It was only now when the deceased had passed away that the paying party was disputing the receiving party's costs. The SAR erred in not taking proper consideration of this fact of the fee agreement. The SAR further erred in not taking into proper consideration the legal presumption of conclusiveness conferred by O. 59 r. 17(3) as to the reasonableness of the amount claimed as costs by the receiving party. (paras 26-29)

(4) The legal services carried out by the receiving party for the deceased spanned seven years. The nature of the work required care and attention to details, planning and charting the course of action to take which involved physical meetings, perusal and drafting of documents and letters, coordinating and engaging with various third parties such as the company secretary, the financial consultant, the lawyers for the

A intending purchaser *etc*. The skill also required knowledge and familiarity with company law. It was through the receiving party's legal advice and services over a period of about 22 months, as detailed in the bill of costs, that the deceased was able to mount an action to wind up the company under the 'just and equitable' principle under s. 218(1)(i) B of the Companies Act 1965. After protracted legal proceedings, the parties finally agreed to settle the matter by entering into a deed of settlement and subsequently into a members' voluntary liquidation. The sheer length of time spent on attending to the matter and the labour involved must be considered in arriving at the fee assessed. The nature of the services performed by the receiving party, which achieved for the C deceased his desired goals of a clean break and the realisation into monies of his shareholding in the company, must weigh against the amount claimed in the bill of costs. Taking into consideration the principles and factors, the fees of RM735,166.72 claimed by the receiving party ought to be allowed in full. (paras 44-49 & 76)

D **(5)** The procedure for taxation is provided for in s. 132 of the LPA and O. 59 r. 12(1) and (2) read together with r. 7(2) of the Rules of Court 2012. The receiving party had fully complied therewith. A perusal of the bill of costs showed that the receiving party's engagement to act for E the deceased commenced in October 2014. The legal services ended when the land was sold in October 2020. For the purpose of limitation, time began to run from October 2020 when the work was completed. Approximately one and a half years later, the receiving party issued a detailed bill to the paying party on 8 March 2022. The bill of costs for taxation was filed on 23 December 2022. Clearly, the six years F limitation period had not set in. The receiving party's claim for the costs was certainly not time-barred. (paras 51 & 52)

(6) In respect of proving the contents of a bill of costs, the law is clear that once a solicitor has delivered the bill of costs to the client, the contents G are presumed to be *bona fide* and there is no necessity to prove its contents. In the present case, the receiving party's bill of costs dated 8 March 2022 had been delivered to the paying party through his solicitors, as requested by the paying party. There was an oral agreement for fees in this case. Full particulars of which were given in the detailed bill dated 8 March 2022 as well as in the bill of costs itself and supported H by the contemporaneous emails between the parties and the course of conduct between the deceased and the receiving party, including the deceased's payment of an initial fee of RM10,000 and subsequent payment of disbursements from time to time totalling RM4,536.08. Neither these emails nor the course of conduct had ever been denied by I the paying party. (paras 66-69)

Case(s) referred to:

Awan Timur Palm Oil Mill Resources (Perak) Sdn Bhd v. Tetuan Shahrizal & Nasir [2021] 1 LNS 71 HC ***(refd)***

Lim Kai Hee & Ors v. Patent View Development Sdn Bhd & Ors [2019] 1 LNS 1044 HC ***(refd)***

Lim Kien Seng & Anor v. Manoharan Kandasamy [2021] 2 CLJ 307 FC ***(refd)***

Ng Kim Hoong & Anor v. Pentadbir Tanah Wilayah Persekutuan [2019] 10 CLJ 110 HC ***(refd)***

Templer Park Golf & Resort Bhd & Anor v. Tetuan George Varughese [2010] 8 CLJ 754 HC ***(refd)***

Legislation referred to:

Companies Act 1965, s. 218(1)(i)
Legal Profession Act 1976, ss. 112(1)(b), 116, 118, 126, 132
Legal Profession (Practice and Etiquette) Rules 1978, r. 11(a), (f), (h)
Rules of Court 2012, O. 59 rr. 7(2), 12(1), (2), 16(1), (2), 17(3)

For the plaintiff - Yeap Chin Pho; M/s Geh Cheng Lok, CP Yeap & Co
For the defendant - Charles Surendra Rajah & Lim Seang Lee; M/s Lim Seang Lee & Assocs

Reported by Suhainah Wahiduddin

JUDGMENT

Quay Chew Soon J:

Introduction

[1] This is an appeal against the decision of the learned Senior Assistant Registrar ("SAR") with respect to a taxation of costs. There are two appeals before me, namely:

(i) notice of appeal to judge in chambers dated 7 April 2023 (encl. 95) filed by the defendant ("receiving party"); and

(ii) notice of appeal to judge in chambers dated 17 April 2023 (encl. 97) filed by the plaintiff ("paying party").

[2] Both notices of appeal arose out of a taxation order made by the SAR on 7 April 2023. Whereby, the SAR ordered that the receiving party's bill of costs dated 23 December 2022 in Form 117 ("bill of costs") be taxed at RM100,000 for Appendix A thereof, RM3,500 for Appendix B thereof and RM6,500 for Appendix C thereof.

Taxation Of Costs

[3] The receiving party is an advocate and solicitor of the High Court of Malaya. She had issued a bill of costs dated 8 March 2022 for professional charges in respect of legal services rendered to Saw Chin Huat, deceased ("deceased"). The said legal services were provided over a span of seven years, beginning from 2014 until 2021.

[4] The receiving party claimed total professional fees of RM735,166.72 and disbursements totalling RM5,674.64. Of which, the deceased had paid a sum of RM10,000 as part-payment of fees and a total sum of RM4,233.83 for disbursements incurred.

[5] The deceased passed away on 29 January 2020. The paying party is the son of the deceased and the executor of the estate of the deceased. The receiving party is claiming against the paying party for payment of the bill of costs.

[6] *Vide* an amended originating summons dated 4 October 2022 in encl. 25, the paying party sought for an order for taxation of the bill of costs. On 2 November 2022, I allowed the said originating summons and granted an order for taxation of the bill of costs pursuant to s. 126 of the Legal Profession Act 1976 ("LPA").

[7] It is germane to note that the bill of costs is for the court's determination of solicitor and client bill of costs, and not party and party bill of costs.

Estate Of The Deceased

[8] The estate of the deceased comprises, *inter alia,* a 60% shareholding in a company known as Chin Hin Rice Mill Sdn Bhd ("company"). The company is in members' voluntary liquidation. Its principal asset is a piece of land known as Lot No. 1201, Mukim 11, Daerah Seberang Perai Utara, Pulau Pinang held under Geran Mukim (First Grade) No. GM 205 ("land"). The land was sold for a purchase price of RM7,068,168 on 12 October 2020.

Bill Of Costs

[9] The total professional fees of RM735,166.72 claimed by the receiving party in the bill of costs consists of the following:

(i) a sum of RM700,166.72 *vide* Annexure A thereof;

(ii) a sum of RM12,000 *vide* Annexure B thereof; and

(iii) a sum of RM23,000 *vide* Annexure C thereof.

[10] *Vide* his notice of appeal dated 17 April 2023 (encl. 97), the paying party asked that the bill of costs be taxed as follows:

(i) a sum of RM10,000 for Annexure A thereof;

(ii) a sum of RM3,500 for Annexure B thereof; and

(iii) a sum of RM5,500 for Annexure C thereof.

Decision

[11] On 25 May 2023, I allowed the receiving party's appeal and dismissed the paying party's appeal. I allowed the receiving party's claim for professional fees of RM735,166.72 in full. I set aside the taxation order of the SAR and taxed the bill of costs as follows:

(i) a sum of RM700,166.72 for Annexure A thereof; A

(ii) a sum of RM12,000 for Annexure B thereof; and

(iii) a sum of RM23,000 for Annexure C thereof.

[12] In para. 22 of her grounds of decision, the SAR stated: B

> 22. It is trite law that the award of costs remains at the discretion of the court. The guidelines to determine the amount of the getting up fee are clearly set out in O. 59 **r. 16(1)** of the Rules of Court 2012. (emphasis added)

[13] In a party-to-party assessment of costs, it is true that O. 59 r. 16(1) of the Rules of Court 2012 'sets out the guidelines'. However, this matter involves a determination of solicitor and client bill of costs, and not party and party bill of costs. C

[14] In an award of costs concerning costs payable to a solicitor by his own client, other guidelines such as r. 11 of the Legal Profession (Practice and Etiquette) Rules 1978 ("LPA Practice and Etiquette Rules") should be considered. And where there is an express or implied agreement, then the conclusive presumption of reasonableness under O. 59 r. 17(3) of the Rules of Court 2012 ("O. 59 r. 17") ought to be applied. D

[15] From the abovementioned statement, I conclude that the SAR had erred in failing to take into account the relevant considerations for a bill of costs payable to a solicitor by his own client. Appellate intervention is therefore warranted. Here is my explanation. E

Order 59 r. 17 Of The Rules Of Court 2012 F

[16] In the assessment of costs claimed by the receiving party, which is a claim between solicitor and client, O. 59 r. 17 ought to be taken into account. Order 59 r. 17 is applicable in an assessment involving the taxation of costs between solicitor and client where there is an agreement between the solicitor and the client in respect of the solicitors' costs incurred. The amount claimed in the bill of costs is a sum of RM735,166.72. This comprises three sets of work detailed respectively in Annexure A, Annexure B and Annexure C thereof. G

[17] The agreement made between the deceased and the receiving party was for the deceased to pay a deferred fee capped at 20% of the realised share entitlement of the deceased in the company. This fee agreement was made between the deceased and the receiving party in the presence of the deceased's financial consultant, one Mr Ooi Ark Heng ("financial consultant"), and the paying party. H

[18] Although this fee agreement was not in writing, it does not mean that it is not binding. It is unenforceable in the sense that it cannot be pleaded as a cause of action under s. 118 of the LPA. However, it creates a conclusive presumption that the agreed costs have been reasonably incurred and is reasonable in amount. I

[19] This is provided for in O. 59 r. 17 which reads:

> **Costs payable to a solicitor by his own client** (O. 59 r.17)
>
> 17(1) This Rule is in amplification and not in derogation of the procedure set out in the Legal Profession Act 1976.
>
> (2) On the determination of a solicitor's bill to his own client (except a bill with respect to non-contentious business and a bill payable pursuant s. 5 of the Legal Aid Act 1971), all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred.
>
> (3) For the purpose of paragraph (1), **all costs incurred with the express or implied approval of the client** shall be **conclusively presumed to have been reasonably incurred** and, where the amount thereof has been expressly or impliedly approved by the client, to have been **reasonable in amount.** (emphasis added)

[20] The circumstances leading to the fee agreement are these. The deceased was financially strapped. But the deceased had a valuable asset in the form of his 60% shareholding in the company, where he was one of the two shareholders and directors. The company's value was in the land that it owned.

[21] For about eight years, the deceased was locked in a dispute with the other shareholder and director of the company. The deceased had tried by himself and his financial consultant to resolve matters, but was unable to achieve a solution with the other shareholder and director who held a 40% shareholding in the company.

[22] The deceased appealed to the receiving party for deferred billing and proposed to pay for the receiving party's services when the company is wound up and the land sold. The deceased agreed to pay an initial down payment of RM10,000, and also to pay for such disbursements as may be required from time to time.

[23] As the scope of the services required and the length of time needed to achieve a resolution could not be ascertained, it was therefore mutually agreed for the fee to be capped at 20% of the deceased's 60% share of the sale price of the land, after deduction of real property gains tax. This is regardless of the actual work done and the length of time taken to resolve the deceased's legal predicament.

[24] On 12 October 2020, the land was sold for a purchase price of RM7,068,168. On 5 November 2020, the receiving party by email dated 5 November 2020, provided the paying party with the 'computation of agreed fees', which is reproduced below:

Computation of Agreed Fees

Selling Price	RM7,068,168.00
Less: RPGT (10%)	(RM 706,816.80)
Balance (90%)	RM 6,361,351.20
The Deceased's share (60%)	RM 3,816,810.70
Agreed fees (20%)	RM 763,362.14
Less: (1) SPA fees (50%)	(RM 28,195.42)
(2) Earlier payments by the Deceased:	
(a) RM10,000 @ 9.10.2014	
(b) RM 3,000 @ 30.8.2014	
(c) RM 1,233.85 @ 23.9.2016	(RM 14,233.85)
Add disbursements (as particularized on attached list - "Payment & Expenses")*	RM 4,536.08
Balance fees & disbursements	RM 725,468.95
Add 6% SST	RM 43,528.14
Total to be paid to the Receiving Party	RM 768,997.10

*A payment of RM3,000 was made as deposit to Pengarah Insolvensi for the winding up petition. We are now applying for you a refund of the said sum since the winding up petition has been withdrawn.

[25] The 'computation of agreed fees' was again provided to the paying party at his request by the receiving party's staff, one Ramsiah Din, in an email dated 3 November 2021. The paying party had expressed his thanks for the re-sent 'computation of agreed fees' by his email dated 3 November 2021. It is noteworthy that the paying party at that time never disputed the said 'computation of agreed fees'.

[26] The deceased himself considered the fee agreement to be fair and reasonable. At no time prior to his death had he ever expressed otherwise. It is only now, when the deceased had passed away, that the paying party is disputing the receiving party's costs. However, as mentioned earlier, the paying party never challenged the 'computation of agreed fees' when he received the same back in the years 2020 and 2021. Instead, he said, "noted, thank you". He may have wanted a reduction of the fees but the fact remains that he never denied the fee agreement.

[27] Order 59 r. 17 was applied in *Ng Kim Hoong & Anor v. Pentadbir Tanah Wilayah Persekutuan* [2019] 10 CLJ 110 at 117 to 118 where the High Court said:

A [17] Reference to what the deceased had agreed to pay the appellants and taking it into account for the purposes of O. 59 r. 17(3) is not the same as giving effect to it as an agreement under s. 116 of the Legal Profession Act 1976. While this may appear to be, however, I do not think it is in fact a circumvention of s. 116 of the Legal Profession Act 1976. Section 116 of the Legal Profession Act 1976 and O. 59 r. 17(3) operate upon very B different premises. If the agreement was valid and binding under s. 116 it would bind both parties without more. Since the agreement has been held not to be a valid agreement under s. 116, it cannot bind the parties. However, there is *no reason why the agreement cannot nevertheless be referred to for the purposes of O. 59 r. 17(3) when taxing a solicitor's bill of costs.* Rule 17(3) C exists and is sufficiently clear on the *need to have regard to any implied or express approval given for costs that are incurred and the amount incurred.* It is the fact that the client had agreed, that is the operative factor in r. 17(3) and not the existence of a binding agreement. Section 116 of the Legal Profession Act 1976 on the other hand, is concerned with the existence of a binding agreement between a solicitor and his client in respect of D costs, entered into in the manner prescribed. While s. 116 sets out the manner in which binding agreements for costs are to be entered into, that does not *per se* preclude costs that are agreed to by the client, and thus approved, from being taken into account for the purposes of O. 59 r. 17(3) of the Rules of Court 2012.

E [18] It would seem to me that the *law desires not to allow a client, who has approved his solicitor's costs, to gainsay and disavow the approval and to seek to have the solicitor's costs taxed without any regard to the prior approval given.* It is not inconceivable that after a period of time, and with the litigation behind them, litigants may be tempted to renege on prior agreements or approvals given. In my view, it is neither unjust nor unfair that prior F approvals given freely, be taken into account. Besides, the requirement of an agreement in writing under s. 116 of the Legal Profession Act 1976 is not a condition to be found in O. 59 r. 17. To ignore the agreement by the deceased would be to ignore O. 59 r. 17(3) altogether. As such, I hold that in accordance with the order of the Court of Appeal of 25 January 2018, the court may have regard to the deceased's agreement with the G appellants, on their costs, for the purposes of O. 59 r. 17, without offending the decision of the Court of Appeal of 30 June 2015.

(emphasis added)

[28] *Ng Kim Hoong* (*supra*) was quoted with approval in *Lim Kai Hee & Ors v. Patent View Development Sdn Bhd & Ors* [2019] 1 LNS 1044; [2019] MLRHU 1407 where the High Court said: H

[15] After all, **when there is an agreement between a solicitor and client on the legal fees that is due, this fact must be taken into account in deciding the ultimate amount that has to be paid.** This proposition is supported by the case *Ng Kim Hoong & Anor v. Pentadbir Tanah Persekutuan* [2018] MLRHU 1190; [2018] 8 AMR 408 where the learned Darryl Goon I Siew Chye JC (as he then was) said as follows:

> However there is no reason why the said agreement cannot be referred to for the purpose of O. 59 r. 17(3) when taxing a solicitor's bill of costs. It is the fact that the client had agreed, that is the operative factor in O. 59 r. 17(3) and not the existence of a binding agreement. (emphasis added)

[29] To my mind, the SAR erred in not taking proper consideration of this fact of the fee agreement. The SAR further erred in not taking into proper consideration the legal presumption of conclusiveness conferred by O. 59 r. 17(3) as to the reasonableness of the amount claimed as costs by the receiving party.

Rule 11 of the LPA Practice and Etiquette Rules

[30] Rule 11 of the LPA Practice and Etiquette Rules reads:

> **Fees for litigious and contentious matters**
>
> In determining the amount of fee for litigious or contentious matters involving representation of a client in Court, it is proper to take into consideration:
>
> (a) the time, labour and skill required;
>
> (b) the novelty and difficulty of the question involved;
>
> (c) whether acceptance of the particular employment will preclude his appearance for others of which he has a reasonable expectation;
>
> (d) the customary charges of the profession for similar services;
>
> (e) the amount in controversy;
>
> (f) the benefit resulting to the client for the services;
>
> (g) the character of the employment – whether casual or for and established client; and
>
> (h) the special position or seniority of the particular advocate and solicitor.

Rule 11(f) Of The LPA Practice And Etiquette Rules

[31] Rule 11(f) of the LPA Practice and Etiquette Rules states that it is proper to take into consideration – "(f) the benefit resulting to the client for the services".

[32] In the instant case, the benefit resulting to the deceased from the legal services provided to him by the receiving party is evident. The legal services were provided on terms beneficial to the deceased. Firstly, it was a term and condition that the fees would be capped (capped fee). Secondly, that the payment of the fee would be deferred (deferred fee).

[33] At the first meeting with the receiving party on 2 October 2014 when it was agreed to cap the fees and for payment to be deferred, the deceased was accompanied by his financial consultant and the paying party. Both

Ms Lim Seang Lee of Messrs Lim Seang Lee & Associates as well as Mr Charles Rajah of Messrs Charles Rajah had attended to the deceased. The deceased was assured that both the two senior counsels, Ms Lim Seang Lee and Mr Charles Rajah would jointly handle his matter. The law firm of Messrs Lim Seang Lee & Associates would be the solicitors on record.

[34] The financial consultant had in previous years, worked with Ms Lim Seang Lee and Mr Charles Rajah on various cases involving shareholders' disputes, and was familiar with their area of legal expertise and competency. Consequently, the financial consultant had recommended their services to the deceased.

Capped Fee

[35] The terms and conditions agreed upon between the deceased and the receiving party was that the receiving party would commence providing legal services to the deceased immediately after the first meeting on 2 October 2014. The legal services to be provided would encompass achieving a clean break from the company and placing the deceased in a position free from liabilities as a director of the company, and to realise into cash his 60% shareholding in the company.

[36] Not knowing the extent of the work to be done or the length of time it would take to achieve his desired goals, it was mutually agreed that his fees payable would be capped at 20% of the realised cash value of his 60% share entitlement in the company. This agreement gave the deceased the assurance that the total fee would not exceed the capped amount, despite the unpredictability of the length of time and the extent of the legal services required to achieve his aim.

Deferred Fee

[37] The deceased had no money to pay for the legal fees to resolve his legal problems, which is expected to be protracted. He was then about 65 years of age and was in frail health. He was facing an adversary which he and his financial consultant could not resolve matters with over the preceding period of eight years.

[38] The deceased wanted to realise into cash his 60% share entitlement in the company. One of his pressing concerns was that the other 40% shareholder and director's dereliction of attending to statutory compliances would attract personal consequences upon himself. The deceased was also a director but took no part in the company's affairs and management.

[39] The deceased was advised that these complaints, if unaddressed by the other shareholder, could form the basis for grounds of him being able to achieve a clean break from the company under the provisions of the Companies Act 1965, then applicable at the time. The receiving party then took action, leading to the calling of directors' meetings to address the

deceased's concerns. Such work commenced from October 2014 up until the filing of Penang High Court Winding Up Petition No. PA-28NCC-110-08-2016. The documentary evidence relating thereto are compiled in the bundle of documents (Appendix A, vol. 1, vol. 2, vol. 3 and vol. 4).

[40] This deferred fee arrangement undoubtedly was of benefit to the deceased. It enabled him to have the receiving party to commence work immediately on his behalf to achieve his aim of realising his 60% share entitlement in the company. And to free him from the potential liabilities of being a director thereof. The fairness and reasonableness of the costs claimed by the receiving party should be assessed against this principle of benefit resulting to the client from the services provided to the deceased.

Rule 11(h) Of The LPA Practice And Etiquette Rules

[41] Rule 11(h) of the LPA Practice and Etiquette Rules states that it is proper to take into consideration – "(h) the special position or seniority of the particular advocate and solicitor".

[42] In this regard, the experience and value that the two attending advocates and solicitors, Ms Lim Seang Lee and Mr Charles Rajah, had brought to their role as counsels for the deceased over a period of seven years is relevant. In the written submissions, they had listed the cases that they had done which shows their experience. The fees ought to commensurate with the level of experience and skill of the lawyers concerned.

Rule 11(a) Of The LPA Practice And Etiquette Rules

[43] Rule 11(a) of the LPA Practice and Etiquette Rules states that it is proper to take into consideration – "(a) the time, labour and skill required".

[44] In the present case, the legal services carried out by the receiving party for the deceased spanned seven years, beginning from 2 October 2014. The details which appear in the bill of costs are reproduced below.

> **Year 2014**
>
> Attending to SCH [accompanied by his son Saw Woei Chin ("SWC") and consultant, Ooi Ark Heng ("OAH") of J Heng Consulting] at office of Messrs Lim Seang Lee & Associates ("Lawyer's Office") on 2.10.2014; taking instructions; discussing and agreeing to professional charges; making SSM search on the Company, attending to SCH, SWC & OAH at Lawyer's Office on 9.10.2014, advising SCH on strategic exercise of his rights as shareholder to realise the value of his interest in the Company and advising him on his responsibilities and potential liabilities as director of the Company; perusing the Company's audited accounts for Financial Year Ending ("FYE") 2008 and various other related documents; advising SCH thereon; advising SCH on his responsibilities and liabilities as a director in connection with the signing and submission of accounts to SSM and pertaining to the requirement by the other director, Saw Chin Kooi ("SCK") for SCH to sign the audited accounts for FYE 2008;

advising SCH on his responsibilities and liabilities as a director in connection with the Company's neglect and failure to prepare and submit audited accounts for FYE 2009, 2010, 2011, 2012 and 2013; preparing letter for SCH to send to SCK in response to SCK's requirement for SCH to sign the FYE 2008 audited accounts as director, preparing letter of indemnity from SCK to SCH; perusing letter from Standard Chartered Bank to Company dated 31.8.2014, advising SCH thereon and preparing letter from SCH to Company in connection with Standard Chartered Bank's said letter;

Year 2015

Advising SCH on initiating talks with SCK; preparing letter for SCH to send to SCK to propose shareholders' and directors' meeting and agenda therefor; advising SCH on steps to take and negotiations to engage upon with SCK for the future direction of the Company and outstanding issues faced by the Company, including the failure to submit accounts to SSM and the status of the Company's principal asset; preparing letter for SCH to send to SCK to call for shareholders and directors' meeting on 29.1.2015; liasing with and advising the said Company Secretary, Ms Lim Yong Chiat of J. Heng Corporate Advisors Sdn Bhd, on the proposed shareholders' meeting of 29.1.2015; writing to the said Company Secretary by email dated 22.1.2015; liasing with OAH on the proposed shareholders' meeting of 29.1.2015; liasing with the said Company Secretary and perusing Minutes of Directors' Meeting dated 29.1.2015; attending to SCH, SWC and OAH and advising on SCH's options and steps to take consequent to the Directors' Meeting of 29.1.2015; perusing draft Minutes of Directors' Meeting held on 5.3.2015, approving same; attending to SCH, SWC and OAH and advising on further steps going forward consequent to the Directors' Meeting of 5.3.2015 and preparing him for directors' meeting fixed for 12.3.2015; advising on certain accounting documents belonging to the Company which were being retained without the Company's authority by SCH's daughter in the course of her work for the Company; preparing letter dated 10.3.2015 for SCH to send to SCK; perusing and approving draft Minutes of Directors' Meeting held on 12.3.2015; attending to SCH, SWC and OAH and advising SCH further to the directors' meeting of 12.3.2015; preparing letter dated 28.3.2015 for SCH to send to SCK; perusing email dated 28.3.2015 and photos from SWC; perusing and approving draft Minutes of Directors' Meeting held on 2.4.2015; attending to SCH, SWC and OAH and advising SCH further to the directors' meeting of 2.4.2015; preparing letter dated 10.4.2015 for SCH to send to SCK; perusing and approving draft Minutes of Directors' Meeting held on 15.4.2015; attending to SCH, SWC and OAH and advising SCH further to the directors' meeting of 15.4.2015; preparing letter dated 15.4.2015 from SCH to SCK.

Advising on sale of the Company land by public tender; preparing Invitation To Tender and placing advertisement of Invitation To Tender in "The Star" and "Kwong Wah Yit Poh" newspapers; drafting Tender Documents, Form of Tender and Sale and Purchase Agreement; liasing with and advising the said Company Secretary in connection with the tender exercise; preparing draft letter for said Company Secretary to send

to shareholders *vide* email dated 30.4.2015; perusing letter dated 5.5.2015 from M/s Presgrave & Matthews, as solicitors for SCK, to SCH and the said Company Secretary; advising thereon; preparing letter dated 8.5.2015 from SCH to reply to SCK in connection with SCK's said solicitors' letter of 5.5.2015; perusing Form of Tender and down-payment submitted by Senam Jaya Sdn Bhd in response to the Invitation To Tender as advertised; advising SCH on his rights and potential liabilities in connection with the Tender Exercise having regard to letter from SCK's solicitors; advising SCH and the said Company Secretary on aborting the tender exercise; preparing letter dated 26.5.2015 for the said Company Secretary to send to Senam Jaya Sdn Bhd;

Perusing and approving draft Minutes of Directors' Meeting held on 19.5.2015; attending to SCH, SWC and OAH and advising SCH further to the directors' meeting of 19.5.2015; perusing letter dated 19.5.2015 from SCK's solicitors and advising SCH thereon; preparing letter dated 26.5.2015 from SCH to SCK; attending to SCH, SWC and OAH and advising SCH further to the letter dated 26.5.2015; preparing letter dated 19.6.2015 from SCH to SCK; attending to SCH, SWC and OAH and advising SCH on letter dated 25.6.2015 from SCK's solicitors to SCH and on meeting to be held on 9.7.2015; perusing and approving draft Minutes of Directors' Meeting held on 9.7.2015; attending to SCH, SWC and OAH and advising SCH further and preparing letter dated 24.7.2015 from SCH to SCK; attending to SCH, SWC and OAH and advising SCH further and preparing letter dated 7.8.2015 from SCH to SCK; perusing and approving draft Minutes of Directors' Meeting held on 12.8.2015; attending to SCH, SWC and OAH and advising SCH further and preparing letter dated 19.11.2015 from SCH to SCK; perusing and approving draft Minutes of Directors' Meeting held on 19.11.2015; attending to SCH, SWC and OAH and advising SCH further; perusing and approving draft Minutes of Directors' Meeting held on 26.11.2015; attending to SCH, SWC and OAH and advising SCH further.

Year 2016

Advising SCH on filing winding up petition; liasing with Company Secretary for some of the relevant documents; drafting Winding Up Petition; attending to SCH, SWC and OAH on 3.7.2016 to discuss the draft Winding Up Petition; liasing with SCW for copies of various corporate documents, including share certificates, share transfer form, all Forms 24 and Forms 49 pertaining to the Company and other relevant documents and perusing same for purpose of finalizing Winding Up Petition for filing in court; amending and revising Winding Up Petition and sending same to SCW; advising SCH on nominating a liquidator; liasing with the proposed liquidator, Tiong Heh Bin; site visit by Mr Charles Rajah & Ms Lim Seang Lee to view the Company premises and the whole land belonging to the Company.

Preparing Winding Up Petition and Affidavit Verifying Petition for affirmation by SCH; filing Winding Up Petition and Affidavit Verifying Petition in court on 30.8.2016; extracting and serving sealed copy of Winding Up Petition and Affidavit Verifying Petition on SCK; serving

A sealed copies of Winding Up Petition and Affidavit Verifying Petition on Ketua Pengarah Insolvensi, the Company, SSM and SCK, preparing Advertisement of Petition and liasing with the "The Sun" and "Oriental Daily" newspapers for suitable publication dates and placing same for publication on 2 occasions each in "The Sun" and "Oriental Daily", *viz.* on 29.9.2016 and 30.9.2016; liasing with Percetakan Nasional Malaysia B Bhd to publish the Advertisement of Petition in Warta Kerajaan Persekutuan; perusing letter dated 26.9.2016 from Mahkamah Tinggi Pulau Pinang; liasing with and writing to SCK's solicitors, Messr Presgrave & Matthews by letter dated 25.10.2016; preparing Memorandum Pengiklanan dan Pengwartaan dated 24.10.2016 and filing same in court; preparing Afidavit Penyampaian Petisyen dated 25.10.2016 affirmed by C Zakhir Hussein Bin Mohamed Ali and filing same in court; preparing Afidavit Penyampaian Petisyen dated 27.10.2016 affirmed by Ramsiah binti Din and filing same in court; preparing Afidavit Pengiklanan dan Pengwartaan dated 27.10.2016 affirmed by Luke Ha Wen Ji and filing same in court; serving Memorandum Pengiklanan dan Pengwartaan dated 24.10.2016, Afidavit Penyampaian Petisyen dated 25.10.2016, Afidavit D Penyampaian Petisyen dated 27.10.2016 and Afidavit Pengiklanan dan Pengwartaan dated 27.10.2016 on Ketua Pengarah Insolvensi; perusing letter dated 28.10.2016 from M/s Presgrave & Matthews and 2nd Respondent's Notice of Intention to Appear on Petition served by said solicitors; attending court on 31.10.2016 for application for Certificate E under Rule 32 of Company (Winding Up) Rules 1972; perusing letter dated 29.10.2016 from M/s Presgrave & Matthews and advising SCH thereon; preparing and sending letter dated 3.11.2016 to M/s Presgrave & Matthews; preparing Afidavit Penyampaian Petisyen (3) affirmed by Badrul Hisham Bin Baharum on 28.10.2016 and filing same in court; preparing Afidavit Tambahan Pempetisyen affirmed by SCH 4.11.2016 and F filing same in court; preparing Sijil Pendaftar pursuant to Rule 32 of Company (Winding Up) Rules 1972 and filing same in court; serving Afidavit Penyampaian Petisyen (3) affirmed by Badrul Hisham Bin Baharum on 28.10.2016, Afidavit Tambahan Pempetisyen affirmed by SCH 4.11.2016 and Sijil Pendaftar pursuant to Rule 32 of Company (Winding Up) Rules 1972 on Pegawai Insolvensi; serving Afidavit G Tambahan Pempetisyen affirmed by SCH 4.11.2016 and Sijil Pendaftar pursuant to Rule 32 of Company (Winding Up) Rules 1972 on M/s Presgrave & Matthews; perusing letter dated 7.11.2016 from M/s Presgrave & Matthews and advising SCH thereon; preparing and sending letter dated 9.11.2016 to M/s Presgrave & Matthews; liasing with M/s Presgrave & Matthews and perusing their letter dated 25.11.2016; H perusing letter dated 28.11.2016 from M/s Presgrave & Matthews; perusing letter dated 29.11.2016 from M/s Presgrave & Matthews.

Perusing 2nd Respondent's Affidavit In Reply affirmed on 29.11.2016 and advising SCH thereon; attending court on 10.11.2016 for case management and advising SCH thereon; getting up on the law, preparing I and filing Petitioner's Written Submissions dated 29.11.2016 and serving same on M/s Presgrave & Matthews; perusing letter dated 28.11.2016 from M/s Presgrave & Matthews and Summons In Chambers (Application for Oral Evidence) and Affidavit In Support of 2nd Respondent; advising

SCH thereon; liasing on several occasions with M/s Presgrave & Matthews to negotiate possible settlement and advising SCH in connection with same; preparing letter dated 19.12.2016 to M/s Presgrave & Matthews and proposed Directors' Circular Resolution for authority for SCH to sell the Company's land; perusing letter dated 30.12.2016 from M/s Presgrave & Matthews and advising SCH;

Year 2017

Preparing letter to court dated 5.1.2017 and advising SCH; writing to M/s Presgrave & Matthews on 11.1.2017 and advising SCH; attending to SCH, advising further on negotiations for settlement, preparing further letter of 11.1.2017 to M/s Presgrave & Matthews setting out proposed terms of settlement; attending to SCH; perusing letter dated 23.2.2017 from M/s Presgrave & Matthews and advising SCH; preparing letter dated 27.2.2017 to M/s Presgrave & Matthew; attending court on 6.3.2017 and advising SCH on matters arising therefrom by email dated 6.3.2017; perusing letter dated 28.3.2017 from M/s Presgrave & Matthews and Valuation Report dated 22.3.2017 prepared by VPC (Alliance) Pg Sdn Bhd and advising SCH; perusing draft Directors' Resolution as amended by M/s Presgrave & Matthews and advising SCH thereon and further amending the draft Directors' Circular Resolution; preparing letter dated 3.4.2017 to M/s Presgrave & Matthews; preparing draft Invitation To Tender, Tender Procedure, Form of Sale and Purchase Agreement and Form of Tender and providing same to M/s Presgrave & Matthews; liasing with M/s Presgrave & Matthews and amending Directors' Circular Resolution and writing to M/s Presgrave & Matthews by letter dated 6.4.2017; perusing letter dated 7.4.2017 from M/s Presgrave & Matthews and Directors' Circular Resolution signed by SCK; advising SCH and attending to signing of Directors' Circular Resolution by SCH on 11.4.2017; further reviewing Invitation To Tender, Tender Procedure, Form of Sale and Purchase Agreement with SCH, revising same and sending same to M/s Presgrave & Matthews; preparing letter dated 12.4.2017 to M/s Presgrave & Matthews; preparing letter dated 14.4.2017 to the said Company Secretary; liasing and negotiating with M/s Presgrave & Matthews by emails to amend, re-amend and further re-amend the Tender Documents and advising SCH on the amendments, re-amendments and further re-amendments; perusing letter dated 7.4.2017 from M/s Presgrave & Matthews and advising SCH; perusing 2nd letter dated 7.4.2017 from M/s Presgrave & Matthews; perusing assessment receipt and Company's bank statements from March to May 2016, July to Sept 2016, Nov 2016 to January 2017 and advising SCH thereon; preparing letter dated 19.4.2017 to M/s Presgrave & Matthews; perusing letter dated 21.4.2017 from M/s Presgrave & Matthews and advising SCH; perusing Valuation Report dated 22.3.2017 prepared by VPC Alliance (Pg) Sdn Bhd and discussing same with SCH; writing to M/s Presgrave & Matthews by letter dated 25.4.2017 to propose amendments to the Valuation Report; perusing letter dated 21.4.2017 from M/s Presgrave & Matthews; preparing email dated 25.4.2017 to M/s Presgrave & Matthews; reviewing and amending Invitation To Tender, Form of Tender, Tender Procedure and Form of Sale and

Purchase Agreeement; liasing with VPC Alliance (Pg) Sdn Bhd to rectify the Valuation Report and give directions on the tender exercise, including the press advertisement thereof; attending court on 5.5.2017 and advising SCH on matters arising therefrom *vide* email dated 5.5.2017; assisting SCH to publicize the tender exercise to our clients *vide* emails dated 22.5.2017; writing to court on 5.6.2017; perusing letter dated 6.6.2017 from M/s Presgrave & Matthews; attending court on 8.6.2017 and advising SCH thereon on matters arising therefrom *vide* email dated 8.6.2017; perusing letter dated 8.6.2017 from M/s Presgrave & Matthews and photocopy of title to Company's property; perusing email dated 8.6.2017 from M/s Presgrave & Matthews to VPC Alliance (Pg) Sdn Bhd; advising SCH thereon and writing to M/s Presgrave & Matthews on the said email; liasing with M/s Presgrave & Matthews, perusing their letter dated 9.6.2017, advising SCH thereon; writing to M/s Presgrave & Matthews by letter dated 14.6.2017; taking further instructions and advising SCH on court-annexed mediation; attending to court-annexed mediation on 21.6.2017; attending court on 6.7.2017 for pre-trial directions and advising SCH of the outcome; writing to court on 21.7.2017; liasing with M/s Presgrave & Matthews on 17.7.2017 and advising SCH thereon; perusing letter dated 22.7.2017 from M/s Presgrave & Matthews and advising SCH thereon; preparing draft Statement of Agreed Facts and sending same to M/s Presgrave & Matthews for approval; writing to M/s Presgrave & Matthews by letter dated 24.7.2017.

Attending to M/s San & Associates in connection with their clients' offer to purchase the Company's land; perusing letter dated 25.7.2017 from M/s San & Associates and advising SCH thereon; accepting cheque for RM87,888.88 from M/s San & Associates and acting as stakeholder; taking further instructions from SCH, advising him and writing to M/s San & Associates by letter dated 26.7.2017; perusing letter dated 26.7.2017 from M/s San & Associates and advising SCH thereon; taking further instructions from SCH and advising him on proposed terms of settlement; writing to M/s Presgrave & Matthews by letter dated 26.7.2017; perusing letter dated 2.8.2017 from M/s San & Associates and advising SCH thereon; preparing draft Settlement Agreement and advising SCH thereon; sending draft Settlement Agreement to M/s Presgrave & Matthews for approval on 17.8.2017; writing to M/s Presgrave & Matthews by letter dated 17.8.2017; writing to M/s Presgrave & Matthews by letter dated 23.8.2017; perusing letter dated 23.8.2017 from M/s Presgrave & Matthews and advising SCH thereon; perusing email dated 24.8.2017 from M/s San & Associates and draft Sale & Purchase Agreement and Limited Power of Attorney proffered by said solicitors and advising SCH thereon; writing to M/s Presgrave & Matthews by letter dated 28.8.2017.

Perusing audited Financial Statements for the year ending 31.8.2008; perusing audited Financial Statements for the year ending 31.8.2009; advising SCH and attending to SCH's signing of Directors' Reports for Financial Statements for the year ending 31.8.2008; attending to SCH's signing of Directors' Reports for Financial Statements for the year ending 31.8.2009; attending to SCH's signing of Statement by Directors in respect

of the Financial Statements for the year ending 31.8.2008; attending to SCH's signing of Statement by Directors in respect of the Financial Statements for the year ending 31.8.2009; liasing and discussing with SCH and OAH and perusing 2 emails thereon both dated 28.8.2017 from OAH and SWC respectively; writing to M/s Presgrave & Matthews by further letter dated 28.8.2017; attending court on 29.8.2017 and advising SCH thereon; advising SCH on the draft Sale & Purchase Agreement and Limited Power of Attorney proffered by M/s San & Associates; amending the said draft Sale & Purchase Agreement and Limited Power of Attorney; writing to M/s Presgrave & Matthews by letter dated 6.9.2017; perusing letter dated 4.9.2017 and enclosures therein from M/s Presgrave & Matthews; liasing with M/s San & Associates and perusing email dated 8.9.2017 from M/s San & Associates; writing to Presgrave & Matthews by letter dated 11.9.2017; representing SCH and attending meeting with SCK, Company Auditor, Mr Khor Yong Yong and Mr Peter Moey, Ms Justina Goon and M/s Lee Kah Kheng all as counsels of SCK at office of M/s Presgrave & Matthews on 13.9.2017 to negotiate terms of settlement between the shareholders; conferring with SCH, perusing all relevant company papers and advising SCH further on proposed terms of settlement; writing to Presgrave & Matthews by letter dated 26.9.2017; further liasing with M/s Presgrave & Matthews and writing to same by letter dated 27.9.2017; perusing proposed amendments to draft Sale and Purchase Agreement as proferred by M/s Presgrave & Matthews and advising you thereon; perusing letter dated 28.7.2017 from M/s Presgrave & Matthews and advising SCH thereon; writing to Presgrave & Matthews by email dated 29.8.2017; liasing with OAH and reviewing Company's financial status with OAH and SCH and perusing OAH's email dated 16.9.2017; perusing email dated 17.9.2017 from SWC; attending court on 27.9.2017; attending court on 2.10.2017 and advising SCH thereon; writing to Presgrave & Matthews by letter dated 4.10.2017; liasing with M/s San & Associates and writing to same by letter dated 5.10.2017; writing to Presgrave & Matthews by letter dated 5.10.2017; writing to Presgrave & Matthews by letter dated 11.10.2017; perusing letter dated 12.10.2017 from M/s Presgrave & Matthews and draft Settlement Agreement as amended by said solicitors and advising SCH thereon; making further amendments to the draft Settlement Agreement and sending same to M/s Presgrave & Matthews by letter dated 13.10.2017; taking further instructions from SCH, advising him and making further amendments to the draft Settlement Agreement and sending same to M/s Presgrave & Matthews by email dated 19.10.2017; taking SCH's further instructions and writing further letter dated 19.10.2017 to M/s Presgrave & Matthews; perusing letter dated 23.10.2017 and advising SCH thereon; attending court on 25.10.2017 and advising SCH thereon; perusing email dated 25.10.2017 from M/s San & Associates and their proposed amendments to the draft Sale & Purchase Agreement and Limited Power of Attorney and advising SCH thereon; liasing with M/s Presgrave & Matthews on the amendments proposed by M/s San & Associates and writing to them by email dated 25.10.2017; writing to M/s Presgrave & Matthews by letter dated 26.10.2017; liasing with M/s Presgrave & Matthews, taking further instructions from SCH, perusing Company's management accounts and

advising him; discussing the Company's accounts with OAH and perusing OAH's email dated 8.11.2017; writing to M/s Presgrave & Matthews by letter dated 9.11.2017; attending court on 10.11.2017 and advising SCH thereon; perusing email dated 14.11.2017 from M/s Presgrave & Matthews and discussing same with SCH and OAH; perusing letter dated 21.11.2017 and advising SCH thereon; perusing letter dated 23.11.2017 from M/s Presgrave & Matthews and the Directors' Report and Statement by Director for the Company's accounts for the years 2010, 2011, 2012, 2013, 2014, 2015 and 2016 and Representation Letter and advising SCH thereon; writing to M/s Presgrave & Matthews by letter dated 27.11.2017; perusing draft Company accounts for the financial years ended 31.8.2010, 31.8.2011, 31.8.2012, 31.8.2013, 31.8.2014, 31.8.2015, 31.8.2016 and 31.8.2017; taking further instructions from SCH, discussing draft accounts with OAH, perusing email dated 30.11.2017 from OAH together with Schedule of Monies owing by Company to SCK and advising SCH thereon; writing to M/s Presgrave & Matthews by 2 letters both dated 5.12.2017; attending court on 15.12.2017 for winding up petition and advising SCH thereon; attending as SCH's representatives at 2nd meeting with SCK, his solicitors from M/s Presgrave & Matthews and OAH at the office of M/s Lim Seang Lee & Associates on 18.12.2017; perusing letter dated 19.12.2017 from M/s Presgrave & Matthews; perusing draft amended Settlement Agreement from M/s Presgrave & Matthews; advising SCH thereon; perusing email dated 20.12.2017 from M/s Presgrave & Matthews together with draft Directors' Resolution and draft Police Report and advising SCH thereon; perusing various amendments and re-amendments of Settlement Agreement made by M/s Presgrave & Matthews; making various amendments and re-amendments of draft Settlement Agreement and liasing with M/s Presgrave & Matthews thereon; amending and approving final amended draft Settlement Agreement and sending same to M/s Presgrave & Matthews for SCK's execution; perusing letter dated 21.12.2017 from M/s Presgrave & Matthews; perusing Settlement Agreement from M/s Presgrave & Matthews signed by SCK; attending to execution of Settlement Agreement by SCH on urgent basis at 9pm. On 21.12.2017 at the private residence of Ms Lim Seang Lee in the presence of Ms Lim Seang Lee, Mr Charles Rajah, SCH's son, SWC and OAH and attesting same; attending court on 22.12.2017 and updating court on status of Settlement Agreement; attending to stamping of Settlement Agreement; writing to M/s Presgrave & Matthews by letter dated 26.12.2017; liasing with the said Company Secretary and preparing draft letter for the said Company Secretary to send to M/s San & Associates; writing to the said Company Secretary by letter dated 28.12.2017; perusing email dated 28.12.2017 from M/s Presgrave & Matthews together with draft Notice of Termination of employment of Gan Lean Guan; advising SCH, amending said draft Notice of Termination and approving same as amended and sending same to M/s Presgrave & Matthews; perusing email dated 29.12.2017 and letter dated 28.12.2017 from the said Company Secretary and advising SCH thereon; perusing Directors'

Circular authorizing sale of land; Members' Resolution approving sale of land and Directors' Resolution in respect of change of registered address, advising SCH thereon; writing to M/s Presgrave & Matthews by letter dated 29.12.2017.

Year 2018

Perusing letter dated 4.1.2018 from M/s Presgrave & Matthews; liasing with the said Company Secretary; preparing draft letter for the said Company Secretary to send to M/s San & Associates; writing to the said Company Secretary by email dated 5.1.2018; perusing email dated 5.1.2018 from M/s Presgrave & Matthews; advising SCH thereon; perusing letter dated 6.1.2018 from M/s Presgrave & Matthews and documents enclosed therewith; advising SCH on the amendments to the Directors' Resolution made by M/s Presgrave & Matthews; writing to the said Company Secretary by letter dated 8.1.2018; perusing letter dated 8.1.2018 from M/s San & Associates and advising SCH thereon; assisting SCH to publicize the property for sale to our developer clients, corporate advisor clients and banker clients *vide* several emails dated 8.1.2018, 10.1.2018 and 22.1.2018; writing to M/s Presgrave & Matthews by letter dated 8.1.2018; liasing with the said Company Secretary, preparing draft directors' circular resolution; writing to the said Company Secretary by email dated 9.1.2018; perusing email dated 9.1.2018 from the said Company Secretary and draft directors' resolution; amending draft directors' resolution and advising the said Company Secretary accordingly; perusing further email dated 9.1.2018 from the said Company Secretary and perusing and approving revised draft directors' circular resolution; sending email to our corporate advisor client, Mr KW Liew, to invite interest in the purchase of the Company's land; writing to M/s Presgrave & Matthews by letter dated 10.1.2018; advising SCH on the law and procedure in respect of members' voluntary liquidation of company; writing to M/s Presgrave & Matthews by further letter dated 10.1.2018; liasing with the said Company Secretary and writing to the said Company Secretary by email dated 10.1.2018; liasing with M/s Presgrave & Matthews by several exchanges of email dated 10.1.2018; attending court on 11.1.2018; liasing with the said Company Secretary and writing to the said Company Secretary by email dated 11.1.2018; liasing with the said Company Secretary and writing to the said Company Secretary by further email dated 11.1.2018; perusing email dated 11.1.2018 from the said Company Secretary and perusing Notice of Board Meeting, Notice of Extraordinary General Meeting; Agreement To Short Notice; Declaration of Solvency and Statement of Account and advising SCH thereon; writing to M/s Presgrave & Matthews by letter dated 11.1.2018; writing to Mr Ooi Ark Heng and Mr Khor Yong Yong by letter dated 12.1.2018; liasing with M/s Presgrave & Matthews and writing to same by letter dated 12.1.2018; writing to the said Company Secretary by letter dated 12.1.2018; perusing letter dated 12.1.2018 from M/s Presgrave & Matthews and signed Members' Circular Resolution and agreement for short notice of EGM; advising SCH on legal position of Company's sole employee, Gan Lean Guan with particular reference to his rights and entitlements under the Employment Act 1955; preparing Notice of Termination to said Gan Lean Guan; amending and approving draft

Notice of Termination and sending same by email dated 12.1.2018 to M/s Presgrave & Matthews; attending and advising SCH at meeting on 16.1.2018 with the said Company Secretary, SCK, SCK's solicitors and the 2 proposed Joint Liquidators; perusing Letter of Consent to act as Joint Liquidator dated 15.1.2018 from Ooi Ark Heng; writing to M/s Presgrave & Matthews by letter dated 16.1.2018; perusing email dated 16.1.2018 from Moores Rowland and draft Directors' Report, Statement by Directors and Representation Letter enclosed therewith; advising SCH thereon; perusing email dated 17.1.2018 from the said Company Secretary and perusing and approving draft Minutes of Board Meeting dated 16.1.2018; liasing with Moores Rowland and writing to same by letter dated 18.1.2018; further advising SCH and attending to signing of amended draft Directors' Report, Statement by Directors and Representation Letter by SCH; writing to Moores Rowland by letter dated 22.1.2018; perusing draft Members' Circular Resolution for EGM and Notice of EGM and advising SCH thereon; liasing with M/s Presgrave & Matthews and writing to same by letter of 24.1.2018; perusing Letter of Consent for Khor Yong Yong to act as Joint Liquidator dated 16.1.2018 from Moores Rowland Consulting (Pg) Sdn Bhd; attending EGM held on 27.1.2018 at Lawyer's Office and advising SCH in connection therewith; perusing email dated 27.1.2018 from the said Company Secretary and perusing engrossed Minutes of Board Meeting dated 16.1.2018; perusing 2nd email dated 27.1.2018 from the said Company Secretary and perusing Directors' Circular Resolution on submission of tax computation and perusing and approving draft Minutes of EGM dated 27.1.2018; perusing 3rd email dated 27.1.2018 from the said Company Secretary and engrossed Minutes of EGM dated 27.1.2018; liasing with the said Company Secretary and perusing email dated 30.1.2018 and approving draft Members' Circular Resolution and advising SCH thereon; perusing 2nd email dated 30.1.2018 from the said Company Secretary, Notice of Appointment of Liquidators and advising SCH; perusing letter dated 30.1.2018 from M/s Presgrave & Matthews; perusing Letter of Engagement (as liquidator) and Letter of Indemnity proffered by Moores Rowland Consulting (Pg) Sdn Bhd and advising SCH thereon; attending court on 1.2.2018 and obtaining Order to strike out Winding Up Petition in view of out-of-court settlement for Company to be put under members' voluntary liquidation; advising SCH thereon; perusing and approving proposed Members' circular Resolution dated 15.1.2018, proposed Directors' Circular Resolution dated 5.9.2017 and proposed Directors' Circular Resolution for authority to issue financial statement for year ended 31.8.2010 to 31.8.2017; sending said proposed Members' Circular Resolution and Directors' Circular Resolutions to M/s Presgrave & Matthews by letter dated 2.2.2018; perusing email dated 2.2.2018 from SWC together with letter dated 24.1.2018 from SSM; perusing email dated 2.2.2018 from said Company Members' Voluntary Winding Up); preparing email dated 3.2.2018 to SWC; perusing letter dated 24.1.2018 and enclosures from SSM and advising SCH thereon; perusing letter dated 3.2.2018 from M/s Presgrave & Matthews together with Members' Circular Resolution dated 15.1.2018 signed by SCK, Directors' Circular Resolution dated 5.9.2017 signed by SCK, Directors' Circular Resolution

dated 19.12.201 signed by SCK and Notice of Resolution (Members' Voluntary Winding Up) dated 27.1.2018 signed by SCK and advising SCH thereon; liasing with and writing to M/s Presgrave & Matthews by letter dated 5.2.2018; perusing email dated 5.2.2018 from Moores Rowland Consulting (Pg) Sdn Bhd and advising SCK thereon; perusing email dated 6.2.2018 from Moores Rowland; perusing email dated 7.2.2018 from said Company Secretary; perusing email dated 7.2.2018 from M/s Presgrave & Matthews; advising SCH of all said emails; writing to M/s Presgrave & Matthews by letter dated 7.2.2018; writing to M/s San & Associates by letter dated 7.2.2018; writing to the said Company Secretary by letter dated 8.2.2018; liasing with M/s Presgrave & Matthews and Joint Liquidators to resolve issues arising from the Declaration of Solvency; perusing letter dated 9.2.2018 from M/s Presgrave & Matthews and fresh Declaration of Solvency signed by SCK; perusing email dated 12.2.2018 from Moores Rowland; liasing with and writing to M/s Presgrave & Matthews by letter dated 12.2.2018; writing to the said Company Secretary by letter dated 13.2.2018; liasing with Moores Rowland Consulting (Pg) Sdn Bhd, perusing their proposed Letter of Engagement and Letter of Indemnity and advising SCH thereon; writing to Moores Rowland Consulting (Pg) Sdn Bhd by our letter dated 19.3.2018; perusing email dated 26.3.2018 from said Company Secretary together with amended Declaration of Solvency and advising SCH thereon; perusing email dated 5.4.2018 from SWC and advising thereon; perusing letter dated 9.4.2018 from M/s Presgrave & Matthews and Directors' Circular Resolution dated 19.2.2018 and Company rubber stamp and unused Company Hong Leong Bank cheque book and advising SCH thereon; perusing email dated 19.3.2018 from Moores Rowland and advising SCH thereon; perusing email dated 19.3.2018 from M/s Presgrave & Matthews and advising SCH thereon; perusing email dated 26.3.2018 from said Company Secretary together with amended Declaration of Solvency and advising SCH thereon; perusing letter dated 15.5.2018 from the said Company Secretary together with the Company's Annual Returns dated 28.12.2007, Form of Transfer of Shares to SCK dated 3.5.1990 and Form of Transfer of Shares to SCK 5.9.2008, Form 49 dated 2.6.2013 and Form 24 dated 15.10.1977.

Year 2019

Perusing letter dated 23.2.2019 from M/s Presgrave & Matthews and advising SCH thereon; writing to M/s Presgrave & Matthews by letter dated 25.2.2019; perusing letter dated 20.6.2019 from M/s Presgrave & Matthews and advising SWC thereon; perusing letter dated 15.11.2019 from M/s Presgrave & Matthews and advising SWC thereon by email dated 18.11.2019; writing to M/s Presgrave & Matthews by email dated 18.11.2019; perusing email dated 19.11.2019 from M/s Presgrave & Matthews; perusing email dated 7.12.2019 from M/s Presgrave & Matthews and advising SWC thereon; writing to M/s Presgrave & Matthews by email dated 9.12.2019; perusing email dated 9.12.2019 from SWC; writing to SWC by email dated 9.12.2019; perusing email dated 9.12.2019 from SWC; perusing further email dated 9.12.2019 from

SWC; writing to SWC by further email dated 9.12.2019; perusing further email dated 9.12.2019 from SWC; perusing email dated 10.12.2019 from SWC and letter dated 9.12.2019 from M/s Kek, Ooi & Lee Hong to SWC; writing to SWC by email dated 11.2.2019; perusing email dated 12.12.2019 from SWC; advising SWC; preparing Power of Attorney whereby SCH is to appoint SWC as his attorney; travelling to Sungai Dua, Butterworth to attend to execution of the said Power of Attorney by SCH; conferring with doctor on SCH's mental capacity to execute Power of Attorney; advising SWC of the Solicitors' opinion on the doctor's advice that SCH did not have capacity to execute the Power of Attorney.

Year 2020

Applying to Ketua Pengarah Insolvensi for refund of winding up deposit by the Solicitors' letter dated 27.10.2020; Preparing draft Order to strike out Winding Up Petition and forwarding same to M/s Presgrave & Matthews for approval.

Year 2021

Perusing letter (misdated 8.9.2019) received on 12.4.2021 from M/s Presgrave & Matthews and the draft Order as approved by them; filing said draft Order in court for approval; extracting said draft Order duly approved by court; engrossing and filing said Order; serving sealed copy of said Order on M/s Presgrave & Matthews on 21.4.2021; serving sealed copy of said Order on Ketua Pengarah Insolvensi and applying for refund of winding up deposit on 28.4.2021.

[45] The time and labour expended are detailed under the headings 'Year 2014', 'Year 2015', 'Year 2016', 'Year 2017', 'Year 2018', 'Year 2019', 'Year 2020' and 'Year 2021'. I accept the following assertion by the receiving party. The nature of the work required care and attention to details, planning and charting the course of action to take which involved physical meetings, perusal and drafting of documents and letters, coordinating and engaging with various third parties such as the company secretary, the financial consultant, the lawyers for the intending purchaser, the other shareholder's advisers *etc.* The documentary evidence has been put in the bundle of documents (Appendix A, vol. 1, vol. 2, vol. 3 and vol. 4).

[46] The skill required was knowledge and familiarity with company law, including the Companies Act 1965 (then the relevant statute). In particular the law concerning the rights and liabilities of directors, rights of shareholders, oppression of shareholders, company winding up and related winding up rules, members' voluntary liquidation and property law. And knowledge and familiarity with case law relating to shareholders' disputes.

[47] It was through the receiving party's legal advice and services over a period of about 22 months, as detailed in the bill of costs, that the deceased was able to mount an action to wind up the company under the "just and equitable" principle under s. 218(1)(i) of the Companies Act 1965. The winding up petition met with opposition from the other shareholder, who

then applied to have the petition converted into a *viva voce* trial. After protracted legal proceedings, the parties finally agreed to settle the matter by entering into a deed of settlement and subsequently into a members' voluntary liquidation in May 2018.

[48] The following calculations were provided to demonstrate how the agreed fees weigh up against the time and effort expended by the receiving party for the benefit of the deceased over the period of seven years.

(a) From Oct 2014 until May 2018 (total of 44 months), intensive work on priority basis was expended for the Deceased.

As a conservative estimate, the average number of hours expended per week during this period is 5 hours.
44 months x 4 weeks = 176 weeks
At 5 hours per week, the total number of hours expended
= 176 x 5 hours = 880 hours
Take time cost of RM1,500 per hour, the total time cost
= 880 x RM1,500 = RM1,320,000

(b) From June 2018 to Dec 2019 (total 19 months) – ongoing work and advice was made available to the Deceased/the Paying Party.
As a conservative estimate, the average number of hours expended per month is estimated to be 2 hours.
At 2 hours per month, the total number of hours expended
= 19 x 2 hours = 38 hours
Take time cost of RM1,000 per hour, the total time cost
= 38 x RM1,000 = RM38,000

(c) From Jan 2020 until Sept 2020 (total 9 months) – ongoing monitoring work.
As a conservative estimate, the average number of hours expended per month is estimated to be ½ hour.
At ½ hour per month, the total number of hours expended
= 9 x ½ hours = 4½ hours
Take time cost of RM500 per hour, the total time cost
= 4½ x RM500 = RM2,250

[49] The sheer length of time spent on attending to the matter and the labour involved must be considered in arriving at the fee assessed. Based on the estimated time cost as set out above, the total billable fees are: (i) RM1,320,000 + (b) RM38,000 + RM2,250 = RM1,360,250. I understand that these figures are rough estimates and purely illustrative. But they do bring home the point that the fees of RM735,166.72 claimed by the receiving party are not unreasonable nor unfair, when viewed in the light of total billable fees.

Preliminary Objection By The Paying Party

[50] The paying party raised a preliminary objection to the bill of costs on the argument that the receiving party failed to exhibit any documentary

A evidence by way of affidavit. The paying party contends that the bill of costs must be accompanied by documentary evidence by way of affidavit. I dismissed this preliminary objection for the following reasons.

[51] The procedure for taxation is provided for in s. 132 of the LPA and O. 59 r. 12(1) and (2) read together with r. 7(2) of the Rules of Court 2012. The receiving party has fully complied therewith. Since the coming into force of the Rules of Court 2012 on 1 August 2012, the old procedure under the Rules of the High Court 1980 is no longer applicable.

[52] This is a taxation of costs payable to a solicitor by his own client and the taxation was pursuant to an order of court dated 2 November 2022. Whereby it was ordered that the receiving party's bill dated 8 March 2022 in respect of legal services rendered to the deceased be taxed pursuant to s. 126 of the LPA.

[53] Section 132 of the LPA stipulates that the bill of costs is to follow the Rules of Court 2012. It reads:

> **132. Bill of costs to follow rules of court**
>
> Bill of costs for taxation as between advocate and solicitor and client shall be drawn in the manner provided by the Rules of the High Court and taxation shall be governed by the Rules.

[54] The relevant rules of court are found in O. 59 r. 12 read together with r. 7 of the Rules of Court 2012. Order 59 r. 12 of the Rules of Court 2012 reads:

> 12(1) Subject to Order 59, rule 7, the Registrar shall have power to determine:
>
> (a) the costs of or arising out of any cause or matter in the Court;
>
> (b) the costs directed by an award made on a reference to arbitration under any written law or pursuant to an arbitration agreement to be paid;
>
> (c) any other costs the determination of which is directed by an order of the High Court; and
>
> 12(2) An application under this rule shall be in Form 117A.

[55] Order 59 r. 7(2) of the Rules of Court 2012 reads:

> 7(2) At the conclusion of the proceedings, the Court will hear submissions from the parties as to the quantum of costs to be awarded and shall order such costs as it deems fit. The Court shall direct that the submissions of the parties on costs are to be tendered as part of the substantive submission of the case or separately and there shall be annexed to the submission of costs a bill for such costs which shall be in Form 117, and shall include particulars of the following:
>
> (a) work done including the value of getting up; and
>
> (b) all disbursements reasonably incurred.

[56] In this case, since the claim is for costs payable by a client to his own solicitors, the submissions on costs were tendered in a written submission, together with the bill of costs in Form 117 (encl. 48). The bill of costs contains particulars of the work done, including the value of getting up, and all disbursements incurred.

[57] In addition to the written submissions, the relevant documents referred to in the bill of costs (*ie*, the bundle of documents) have been provided to the counsel for the paying party. The receiving party also provided a set of the bundle of documents to the court on 24 February 2023. In the premises, the paying party's preliminary objection is baseless.

Submissions By The Paying Party

[58] In his written submissions, the paying party submits that there are two issues to be addressed, *viz*. (i) time bar; and (ii) quantum.

Time Bar

[59] The paying party alleges that the bill of costs must be limited to a six-year time period prior to 23 December 2022. That date being the date of the bill of costs. The paying party alleges that the bill of costs is time-barred because the receiving party is demanding for work done more than six years ago since 2 October 2014. I disagree. In my opinion, the relevant date is the date the legal services were completed, and not when it was commenced.

[60] In *Lim Kien Seng & Anor v. Manoharan Kandasamy* [2021] 2 CLJ 307; [2021] 5 MLRA 207, the Federal Court held that the relevant starting date for the purpose of determining limitation is the date when the legal services were completed, not the date when the legal services commenced. In answering the leave questions posed, the Federal Court held (at p. 316 (CLJ); p. 217 (MLRA)):

> [21] Applying the legal principles to the facts, we agree with the appellants that the answers to the leave questions should be as follows:
>
> …
>
> (e) Whether the limitation period of six years under s. 6(1) of the LA applies to any action by an advocate and solicitor to recover costs due for any business done by him under the LPA?
>
> Answer: Yes.
>
> If the answer is yes, whether the **limitation period of six years starts from the date the business done by an advocate and solicitor is completed?**
>
> Answer: Yes. (emphasis added)

[61] A perusal of the bill of costs will show that the receiving party's engagement to act for the deceased commenced in October 2014. The legal services ended when the land was sold in October 2020. For the purpose of limitation, time begins to run from October 2020, when the work was completed. Approximately 1½ years later, the receiving party issued a detailed bill to the paying party on 8 March 2022. The bill of costs for taxation was filed on 23 December 2022. Clearly, the six-year limitation period has not set in.

[62] Further, it was a term of the fee agreement between the deceased and the receiving party that billing would be deferred until the land was sold. This was because the deceased was financially tight and requested to pay the receiving party's fees from his share of the proceeds of the sale of the land. Thus, when the said land was sold on 12 October 2020, the receiving party had issued a first interim bill to the paying party by email on 1 November 2021. Upon the paying party's request for a detailed bill, the receiving party had issued the said detailed bill on 8 March 2022 for the full fees, superseding the first interim bill. The receiving party's claim for the costs is certainly not time-barred.

Quantum

[63] The paying party contends that the quantum awarded by the SAR is excessive. The paying party submits that the burden of proof is on the receiving party to prove that "all the alleged getting up has been performed". The paying party alleges that the amount claimed by the receiving party is exorbitant and oppressive.

[64] Firstly, a distinction must be drawn between: (i) the burden of proving the *bona fide* of the bill of costs, and (ii) the burden of proving the reasonableness and fairness of the bill of costs. As far as the burden of proving the reasonableness and fairness of the bill of costs is concerned, the receiving party does not dispute that the burden of proof lies on her. Thus the receiving party has addressed and justified the amount in the bill of costs with specific reference to the legal principles to be taken into account in the assessment of costs. Namely O. 59 r. 16 and r. 17 of the Rules of Court 2012 and r. 11 of the LPA Practice and Etiquette Rules.

[65] Secondly, the paying party seems to be labouring under a misapprehension that the taxation was about 'getting up'. The SAR appears to be under the same impression when she said this at the end of her grounds of decision – "In total, the getting up is reduced to RM110,000". But this is not a party-to-party taxation where the costs of a winning party is being taxed. Instead, this is a taxation of costs payable to a solicitor by his own client, which is for all work done by a solicitor for his client.

[66] Thirdly, in respect of proving the contents of a bill of costs, the law is clear that once a solicitor has delivered the bill of costs to the client, the contents are presumed to be *bona fide* and there is no necessity to prove its contents. In the present case, the receiving party's bill of costs dated 8 March 2023 has been delivered to the paying party through his solicitors, as requested by the paying party.

[67] In *Awan Timur Palm Oil Mill Resources (Perak) Sdn Bhd v. Tetuan Shahrizal & Nasir* [2021] 1 LNS 71, the High Court said:

> [8] The relevant provision to scrutinise to determine if there was a *bona fide* bill of costs is section 124 of the Legal Profession Act, which reads:
>
> > 124 – **No advocate and solicitor to sue for costs until delivery of bill of cost**
> >
> > (1) Except as authorized by this Act, no advocate and solicitor shall without the leave of the court commence or maintain any action for the recovery of any costs due for any business done by him until the expiration of one month after he has delivered to the party to be charged therewith, or sent by post to, or left with him at, his office or place of business, dwelling house or last known place of abode, a bill of costs, which bill shall be signed either by the advocate and solicitor, or in the case of a partnership, by any of the partners, either with his own name or with the name or style of the partnership, or by another advocate and solicitor employed by the first named advocate and solicitor or the partnership, or be enclosed in or accompanied by a letter, signed in the like manner, referring to the bill.
> >
> > (2) Where a bill is proved to have been delivered in compliance with subsection (1) it shall **not be necessary in the first instance for the advocate and solicitor to prove the contents of the bill** and it shall be **presumed until the contrary is shown to be a bill *bona fide*** complying with this Act. (emphasis added)

[68] The High Court referred to the High Court case of *Templer Park Golf & Resort Bhd & Anor v. Tetuan George Varughese* [2010] 8 CLJ 754 as follows:

> [11] Reference at this juncture is made to *Templer Park Golf & Resort Bhd & Anor v. Tetuan George Varughese* [2010] 8 CLJ 754, where it was stated:
>
> > The defendant's claim stood in law to be *bona fide* and the plaintiffs' claim that the sum claimed was *bona fide* disputed was not supported with contemporary objections against the bills and the line of arguments raised by the plaintiffs militated against the relevant provisions of LPA 1976. And in consequence, the plaintiffs' application must be dismissed with direction as they had stated that they were in a position to settle the bills.
>
> [12] An invoice delivered by a solicitor to his client becomes a *bona fide* bill by virtue of the presumption encapsulated in section 124(2) of the Legal Profession Act. A perusal of the documentary evidence adduced by

A the Defendant indicated that Darshan Singh had acknowledged receipt of the Invoices. The Defendant had, therefore, raised the presumption of a *bona fide* bill of costs.

[69] Fourthly, the bill of costs is fixed for taxation only because the fee agreement was not in writing. And therefore, does not fall within s. 116 of
B the LPA, under which taxation would not have been necessary. Nevertheless, there is an oral agreement for fees in this case. Full particulars of which are given in the detailed bill dated 8 March 2022 as well as in the bill of costs itself. And supported by the contemporaneous emails between the parties and the course of conduct between the deceased and the receiving
C party. Including the deceased's payment of an initial fee of RM10,000 and subsequent payment of disbursements from time to time, totalling RM4,536.08. Neither these emails nor the course of conduct have ever been denied by the paying party.

Submission In Reply By The Paying Party

D

[70] In his submission in reply, the paying party raised new arguments. At the outset, I note that these arguments were not canvassed during the taxation proceedings. I would be reluctant to allow the paying party to raise new issues in this appeal before me. For completeness, however, I will briefly address the said arguments.

E

[71] First, the paying party complains that the receiving party is claiming costs for two counsels *ie*, Ms Lim Seang Lee and Mr Charles Rajah. The paying party says that the court did not certify costs for two counsels. Here again, the paying party invokes O. 59 r. 16 of the Rules of Court 2012 and argues that the basis of taxation is on a standard basis.

F

[72] Order 59 r. 16(2) of the Rules of Court reads:

> (2) Subject to the other provisions of these Rules, the amount of costs which any party are entitled to recover is the amount allowed after determination of costs on the standard basis where:
>
> G (a) an order is made that the costs of one party to the proceedings be paid by another party to those proceedings;

[73] I would simply reiterate that the bill of costs is for the court's determination of solicitor and client bill of costs, and not party and party bill of costs. Order 59 r. 17 is therefore the operative provision, not O. 59 r. 16
H of the Rules of Court 2012. In any event, the deceased had agreed to engage the services of both Ms Lim Seang Lee and Mr Charles Rajah at the meeting on 2 October 2014.

[74] Second, the paying party alleges that the receiving party's claim is
I champertous and prohibited under s. 112(1)(b) of the LPA. I disagree. The fee arrangement here works on a capped fee basis. The cap being 20% of the realised cash value of the deceased's 60% share entitlement in the company.

That does not tantamount to an agreement by which the receiving party is retained for a contentious proceeding which contemplates payment only in the event of success in such proceeding.

[75] Third, the paying party complains that the receiving party issued only one bill for the whole of the seven years period. The paying party contends that the receiving party could have issued interim bills. Such contention, however, misses the point that there was a deferred fee arrangement in place between the receiving party and the deceased.

Conclusion

[76] To sum up, the extent of the work done, the sheer length of time it took and the nature of the services performed by the receiving party, which achieved for the deceased his desired goals of a clean break and the realisation into monies of his shareholding in the company, must be weighed against the amount claimed in the bill of costs. Taking into consideration the principles and factors discussed above, I am satisfied that the fees of RM735,166.72 claimed by the receiving party ought to be allowed in full.

[77] I awarded interest at the rate of 5% per annum on the taxed costs from the date of taxation by the SAR until the date of full settlement. I ordered the paying party to pay costs of RM5,000 to the receiving party in respect of each notice of appeal.